

### REMARKS

This Reply is responsive to the non-final Office Action<sup>1</sup> mailed April 28, 2006 in this RCE2 patent application.

Claims 1-5, 7-32 were presented for examination and were rejected. No claims are amended, canceled or added. Thus, claims 1-5 and 7-32 are pending. The independent claims are 1, 8, 17, 24, 28 and 30.

Claims 1-5 and 7-32 are rejected under 35 U.S.C. § 103(a) as being un-patentable over MORRILL, Jr. (U.S. Patent No. 5,991,749) in view of newly-cited YANG (U.S. Patent Application Publication 2004/0177008 A1). Claims 13 and 14 are rejected under 35 U.S.C. § 103(a) as unpatentable over MORRILL, Jr. in view of YANG and further in view of STILP et al. (U.S. Patent No. 5,327,144). These rejections are respectfully traversed because the references, taken alone or in combination, do not disclose or suggest all elements of the currently amended claims.

Consider claim 1, for example.

A system configured to facilitate ordering of goods or services by a customer from a vendor having multiple vendor locations while the customer is on travel, the system comprising: one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer, both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at

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<sup>1</sup> The Office Action may contain a number of statements characterizing the cited reference(s) and/or the claims which Applicant may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicant does not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicant deems allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicant that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer; and a processing center coupled between the one or more base stations and the vendor and configured to receive the abbreviated dialing sequence, determine from the remote location the one of the multiple vendor locations to which to transmit customer information, and bill a wireless account of the customer for a monetary amount of the order; wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations which allows the goods or services to be picked-up by the customer and the travel to continue while utilizing the goods or services. (Emphasis added.)

As previously explained in the amendment filed on October 6, 2005, the Markush grouping disqualifies the parking lot facility example in the teaching reference MORRILL as being relevant subject matter to any of Applicant's claims. Indeed, the language recited in claim 1: "the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, toll booths, convenience stores and gas stations", clearly excludes "parking lots."

Notwithstanding the inapplicability of the parking lot example in MORRILL, the Office Action continues to erroneously apply the parking lot example against Applicant's claims. The Examiner is referred to the paragraph spanning pages 2 and 3 in the Office Action wherein it cites "column 6, line 63-column 7, line 26" against Applicant's claim language: "configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer." This particular cite is describing a parking facility operation, and is therefore an irrelevant example with respect to claim 1. On this basis alone, all limitations of claim 1 are not disclosed or suggested and the 35 U.S.C. §103(a) rejection of claim 1 should be withdrawn and the claim allowed on this basis alone.

The same error is repeated on page 3 in the Office Action where it says: “(see paragraph bridging columns 6-7 [of MORRILL], wherein the *facility* ID number is an indication of the user's location; see also column 4, line 34)” (Emphasis added.) The paragraph bridging columns 6-7 is the parking lot *facility* example which is not applicable to Applicant's claim 1. In addition, column 4, line 34 is irrelevant because its brief reference to “general location” has nothing to do with ordering in advance - it merely indicates that the location where the transaction took place shall be reported in the periodic (e.g., monthly) billing statement. In other words, although it mentions “location” it has nothing to do with “preparation of the order being initiated at one of the vendor *locations* by the vendor *before* the customer arrives at the one of the vendor *locations*” as recited in claim 1. Again, on this basis alone, all limitations of claim 1 are not disclosed or suggested and the 35 U.S.C. §103(a) rejection of claim 1 should be withdrawn and the claim allowed on this additional basis alone.

Moreover, the instant Office Action dated April 28, 2006, and the previous office action dated August 12, 2005, completely ignore certain claim language that was added by an amendment filed on June 10, 2005. In that amendment, immediately following base-station claim language: “one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer” in claim 1, the following language was added:

“both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer.” (Emphasis added.)

In the instant Office Action and in the previous office action, the Examiner applies “column 6, line 63 - column 7, line 26 of MORRILL against the base-station claim language “one or more base stations configured to receive an abbreviated dialing sequence that corresponds to an order from a mobile terminal used by the customer”, but applies NOTHING against the added claim language centrally set-forth above. That language was ignored. Therefore the rejection of claim 1 in the instant Office Action (and in the prior office action) is incomplete.

Furthermore, Applicant submits that there is nothing disclosed in MORRILL which can reasonably be applied against the added claim language centrally set-forth above. The reason why the exercise of attempting to apply MORRILL against Applicant's claims is futile, is because MORRILL is not directed to placing orders ahead of time to a vendor to save time. Even the irrelevant parking lot example is not directed to placing an order ahead of time to a vendor for the purpose of saving time. MORRILL is directed merely to transacting business using a cell phone.

Moreover, the Examiner states that MORRILL does not explicitly disclose allowing the travel to continue while utilizing the goods or services and Applicant agrees. (Office Action, page 3) The Examiner relies upon YANG to cure this deficiency. YANG, was cited for the purpose of showing: “a system wherein the goods or services are selected from the group of vendors consisting of restaurants, pharmacies, grocery stores, convenience stores and gas stations which allows the goods or services to be picked up by the customer and the travel to continue while utilizing the goods or services” (Office Action, page 3).

Regardless of what YANG may or may not show, it does not cure the fundamental deficiency of MORRILL noted above<sup>2</sup>. Indeed, YANG certainly does not show that the claimed order is prepared at a vendor location before the customer arrives AT THAT VENDOR LOCATION, to receive delivery of the goods or services. Rather, the YANG disclosure is directed to customer pickup of vendor-supplied goods at a “portable locker station” on the traveler’s (customer’s) commuting route. *See* YANG, Abstract or paragraph [0014]. This portable locker station, deployed at some ad-hoc location on the customer’s commute, even if misinterpreted as a vendor location, is still not “the one of the vendor locations” where the “preparation of the order [was] being initiated” as recited in claim 1. Indeed, in YANG, the order was not prepared in the portable locker station.

In sum, either YANG or the MORRILL/YANG combination, at best, discloses a customer taking delivery of pre-ordered goods at a roadside kiosk termed a “portable locker station” - certainly NOT where the order was prepared - while Applicant’s claim 1 recites the opposite notion. In Applicant’s claim 1, the customer takes delivery of pre-ordered goods WHERE THE ORDER WAS PREPARED. Indeed, Applicant’s claim 1 recites, *interalia*, “both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer.” (Emphasis added) Therefore, in

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<sup>2</sup> Applicant does not concede that MORRILL and YANG are properly combinable in the first place, but even if they were, the combination still would be deficient to reject claim 1, as explained above.

Applicant's claim, the customer drives to the place where the order is prepared, not to an intermediary, ad-hoc location where the order was delivered into a locker, awaiting customer pickup.

For these reasons, YANG, and therefore the MORRILL/YANG combination do not disclose or suggest "both the order being initiated at a remote location by the customer and preparation of the order being initiated at one of the vendor locations by the vendor before the customer arrives at the one of the vendor locations, to reduce wait time of the customer by time-shifting preparation of the order by the vendor to coincide with transit time of the customer" as recited in claim 1. Therefore, the 35 U.S.C § 102(a) rejection of claim 1 should be withdrawn and the claim allowed on this additional basis alone.

On page 4 of the Office Action, it indicates that MORRILL fails to explicitly disclose calculating the location of the mobile terminal based on signal information received at one or more base stations using time delay information and global positioning system information, and Applicant agrees. The Office Action relies on STILP to teach this deficiency in MORRILL. Regardless of what STILP actually teaches or doesn't teach, it fails to cure the deficiencies of the MORRILL/YANG combination noted above with respect to its 35 U.S.C § 103(a) rejection of claim 1.

The other independent claims, namely, claims 8, 17, 24, 28 and 30 each includes the same or a similar limitation to that discussed above with respect to claim 1. As with claim 1, this limitation in each of claims 8, 17, 24, 28 and 30 has been ignored in the Office Action (and in the prior office action). Accordingly, all of these other independent claims are allowable for the

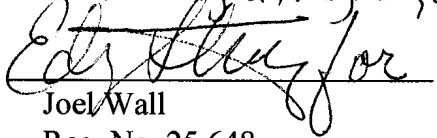
same reasons as those which were given above with respect to claim 1.

All other pending claims, dependent from one or another of the allowable independent claims, are likewise allowable, at least for reasons based on their dependency, directly or indirectly, from allowable base claims.

**CONCLUSION**

In view of the foregoing remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and timely allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. §1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

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